IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

WP(C).No. 10314 of 2007(C)

OS.63/2001 of MUNI-MAGI.COURT,PONNANI
.....

PETITIONER:

THAMI @ KUTTAN, S/O.PUNDU,
MADEKKATT, MUDUR AMSOM, POTTUR DESOM,
PONNANI TALUK.

BY ADV. SRI.K.J.SAJI ISAAC
DR.ELIZABETH VARKEY

RESPONDENTS:
---

1. VIKAS CHITTY FUNDS, PROPRIETOR,
DECEASED IRUDUKAVIL CHANDRAN'S LEGAL HEIRS
CHILDREN.
IRUDUKAVIL SHEELA, 38 YEARS.

2. IRUDUKAVIL SHAJAN, 36 YEARS.

3. IRUDUKAVIL SHANILKUMAR, 33 YEARS.

4. IRUDUKAVIL SHAJIL, 32 YEARS.

5. IRUDUKAVIL CHANDRAN'S WIFE VILASINI,
59 YEARS.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 10314 of 2007

Dated this the 26th day of March, 2007

JUDGMENT

The petitioner is the judgment debtor in O.S.63/2001 on the file of the Munsiff's Court, Ponnani. E.P.36/2005 was filed in the said suit for realisation of the decree debt which was more than Rs.85,000/-. An extent of 27 cents of land with a residential house therein belonging jointly to the petitioner/judgment debtor and his brother is stated to be the property that is brought to sale. The petitioner filed E.A.No.243 of 2006 for appointment of a Commission for filing report and plan after inspection of the property so as to facilitate the court in fixing the upset price and also deciding as to the portion of the said 27 cents which alone need be sold in execution for realisation of the decree debt. According to the petitioner, the market value of the property will be Rs.25,000/- per cent. The execution court dismissed the application vide Ext.P1 order and hence, this writ petition.

2. The grievance of the petitioner is that the court below has refused to conduct sale of only a portion of the property that would satisfy the decree debt and has refused to issue a commission either to demarcate the property or to fix the value of the property. I have heard the counsel for the petitioner extensively. I do not find any merit in the contentions advanced. The property is having only an extent of 27 cents with a residential building therein, which is jointly owned by the petitioner and his brother. As to what the property will fetch in court for sale is a matter to be seen especially when considering the nature of the property any person who bids in auction will only get right to institute a suit for partition and allotment of share so bid in auction as the brother of the petitioner is the co-owner with the petitioner/judgment debtor. Further, even in the event of a portion of the property being demarcated, without the consent of the brother of the judgment debtor it cannot be said that the brother of the judgment debtor will cease to have any right over that portion of property that is brought to sale. It is submitted that the petitioner has contended in the court below

stating the price of the property, the value of the building etc, and that the court below has directed the decree holder to show in the sale proclamation, the nature of the property, the value of the property and all other details as stated by the petitioner/judgment debtor as well being shown in the sale proclamation as stated by the judgment debtor so that intending purchasers will get an idea as to for what amount can a bid made in relation to the property. The request of the petitioner to demarcate a portion of the property alone for being brought to sale cannot be considered as the property is owned by him in common with his brother and it is not likely that for such a property, the amount shown by the petitioner will be offered by a prudent intending purchaser. This writ petition impugning Ext.P1 order of the execution court in the circumstances is devoid of merit and is dismissed.

(K.P.Balachandran, Judge)

ma /True copy/

P.A. TO JUDGE